

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|---------------------------------|---|------------------|--------------------|
| UNITED STATES OF AMERICA | : | CASE NOS. | 1:CR-01-193 |
| | : | | 1:CR-05-006 |
| | : | | 1:CR-05-203 |
| v. | : | | 1:CR-05-228 |
| | : | | 1:CR-05-232 |
| | : | | 1:CR-05-252 |
| JOHN MIZIC | : | | 1:CR-05-253 |
| | : | | 1:CR-05-256 |
| | : | | 1:CR-05-259 |
| | : | | 1:CR-05-284 |
| | : | | 1:CR-05-285 |
| | : | | 1:CR-05-287 |
| | : | | 1:CR-05-288 |
| | : | | 1:CR-05-294 |
| | : | | 1:CR-05-296 |
| | : | | 1:CR-05-305 |
| | : | | 1:CR-05-306 |
| | : | | 1:CR-05-324 |
| | : | | 1:CR-05-367 |
| | : | | 1:CR-05-440 |
| | : | | 1:CR-05-456 |

MEMORANDUM

Before the court is Defendant John Mizic's *pro se* motion for reconsideration of this court's denial of a motion for reduction of the sentence imposed on February 17, 2007 (doc. 71). That sentence was affirmed by the Third Circuit Court of Appeals on September 21, 2009 (doc. 38). An amended judgment was filed on March 11, 2010 (doc. 41). This amended judgment gave Mizic a ten-month reduction pursuant to Federal Rule of Criminal Procedure 35(b).

On April 7, 2010, Mizic filed a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or reduce sentence (doc. 42). On April 9, 2010, this court issued an administrative order containing notice to Mizic of the limitations on filing motions pursuant to 28 U.S.C. § 2255 (doc.45). On April 15, 2010, Mizic filed a notice of election in which he stated his intention to proceed on the § 2255 motion as filed (doc.

46). On April 15, 2010, an order was issued directing the Government to show cause why relief should not be granted (doc. 47).

In this motion, Mizic claimed that the 99 month consecutive sentence imposed was contrary to the concurrent sentence which was bargained for and that such a consecutive sentence imposed an additional six months imprisonment. Following briefing, counsel was ultimately appointed for Mizic. Following consultations among the counsel for the government, defense counsel, and the probation officer, an agreement was reached to resolve any outstanding sentencing issues. An amended judgment was entered on November 2, 2010 (doc. 67). Thereafter, on November 22, 2010, Mizic filed, *pro se*, a motion withdrawing all remaining claims contained in his § 2255 motion (doc. 68), which was granted by this court (doc.70). No appeal was taken from this judgment.

The instant motion does not set forth under what Federal Rule of Criminal Procedure he brings this motion. It is untimely under Federal Rule of Criminal Procedure 35. If it is intended to be another motion pursuant to 28 U.S.C. § 2255, it is not only untimely but would be considered a second or successive petition requiring consent to file from the Third Circuit Court of Appeals.

Therefore, this court is without jurisdiction to consider the motion. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: March 26, 2012.

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ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT** the document entitled, "Motion for Reconsideration of the Court's Denial of Motion for Reduction of Sentence Imposed February 17, 2007" (doc. 71) is dismissed for lack of jurisdiction.

s/Sylvia H. Rambo
United States District Judge

Dated: March 26, 2012.